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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,301	04/28/2006	Yoshinori Seko	1422-0715PUS1	4790
2292 7590 08/20/2009 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER KRAUSE, ANDREW E				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
08/20/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/577,301

Applicant(s)

SEKO ET AL.

Examiner

ANDREW KRAUSE

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 22 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of Claims

1. Claims 1-9 are pending. Claims 1-5 are amended, claims 6-9 are new. Objections to claims 1-5 set forth in the previous action are overcome by applicant's amendment.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Takenawa et al. (translation of JP PN 10204408).
4. The rejection is maintained as applied in the office action dated 1/23/09.
5. Regarding claims 6-8, one having ordinary skill in the art at the time of the invention would expect the composition of Takenawa, having the composition claimed in claim 1, to have the same properties.

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claim 5 rejected under 35 U.S.C. 103(a) as being unpatentable over is rejected under 35 U.S.C. 103(a) as being unpatentable over Takenawa et al, (translation of JP PN 10204408) in view of Marrs et al. (US 5,633,030).
8. The rejection is maintained as applied in the office action dated 1/23/09.
9. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Takenawa et al, (translation of JP PN 10204408) in view of Almond (4,487,866).
10. Takenawa discloses the composition of claim 1, wherein the potassium salt is a potassium gluconate. The goal of Takenawa is to provide xanthan gums which are more readily dispersible in water.
11. Almond discloses a method of rendering anionic polymers, such as xanthan gum readily dispersible in water (col. 2, line 40-col. 3, line 10). Thus, the references are analogous art.
12. Almond discloses the use of potassium salts, such as potassium chloride in combination with anionic polymers, such as xanthan gum, in order to improve the hydration of the anionic polymer (col. 6, lines 6-30). Potassium gluconate is disclosed in Takenawa to be used as a water dispersion and dissolution enhancing agent ([0003]) showing that it serves to improve the hydration of the xanthan gum. One having ordinary skill in the art at the time of the invention would find it obvious to substitute

potassium gluconate for potassium chloride, as such a modification would require only the substitution of one known hydration improver for another.

Response to Arguments

13. Applicant's arguments filed 4/22/09 have been fully considered but they are not persuasive.

Applicant states that the Takenawa reference corresponds to Comparative Example I in the pending application. Applicant argues that by practicing the invention in the manner of Comparative Example I, that "the effects of the present invention cannot be exhibited". This argument is not considered persuasive, as it is unclear what these effects are, and also why they cannot be exhibited. The argument amounts to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

14. Further, it should be noted that though applicant holds Comparative Example I and the Takenawa reference to be equivalent, the two differ at least in that the Comparative Example requires spraying, which is not required by Takenawa.

15. Finally, applicant argues that "...as in Comparative Example 1, Takenawa fails to achieve the present limitation of "xanthan gum in which a potassium salt is attached to a powder surface of the xanthan gum". However, Comparative Example 1 states "...it was confirmed that since the potassium was not evenly attached in the above-

mentioned xanthan gum composition...", indicating that there is potassium salt attachment to the powder surface of the xanthan gum in Comparative Example 1.

Conclusion

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **ANDREW KRAUSE** whose telephone number is (571)270-7094. The examiner can normally be reached on 7:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571)272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ANDREW KRAUSE/
Examiner, Art Unit 1794

/KEITH D. HENDRICKS/
Supervisory Patent Examiner, Art Unit 1794